

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF DULUTH AND
DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is by and between the CITY OF DULUTH, a municipal corporation of the State of Minnesota (“City”), and DULUTH ENTERTAINMENT CONVENTION CENTER AUTHORITY, an authority of the State of Minnesota, created and existing under the laws of Minnesota, 1963, Chapter 305, as amended (“DECC”). The City and DECC are collectively referred to in this Agreement as “Parties.” This Agreement is effective as of the date of City Clerk’s signature below (“Effective Date”).

WHEREAS, the City Council annually allocates funds for a fireworks display occurring on July 4 each year; and

WHEREAS, in October 2024, City issued a request for proposals for the management of Bayfront Festival Park which also sought information about proposers’ capacity and interest in assuming the coordination of the annual Fourth Fest Event and fireworks display; and

WHEREAS, DECC submitted a proposal, and the management of Bayfront Festival Park was awarded to DECC; and

WHEREAS, in 2025 DECC staff shadowed City staff to learn about the coordination of the fireworks display.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

I. TERM AND TERMINATION.

- A. Term. Notwithstanding the date of execution of this Agreement, this Agreement shall commence on the Effective Date and shall continue through December 31, 2029 (the “Term”), unless earlier terminated as provided by this Agreement.
- B. Without Cause. Either party may terminate this Agreement without cause by providing one hundred twenty (120) days’ written notice to the other party.
- C. For Cause. The City may terminate this Agreement for material breach by DECC of any provision of this Agreement if such breach is not cured to the satisfaction of the City within fourteen (14) days of delivery to DECC of a written notice by the City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach. If DECC fails to cure the breach as required by the notice prior to the expiration of the fourteen (14) day notice, this Agreement shall automatically terminate.

II. DECC’S RESPONSIBILITIES. DECC shall be responsible for the following:

- A. Fireworks Display. DECC shall provide all professional services necessary for a fireworks display annually on the evening of July 4 in coordination with the Fourth Fest event hosted at Bayfront Festival Park and make all necessary provisions for such including, but not limited to, and at its sole cost and expense, contracting for the furnishing of a fireworks display, securing sufficient area and site-specific materials for the display, and ensuring adequate protection to prevent spectators from entering the display area.
- B. Site Selection. Each year DECC shall select a site for the fireworks display subject to the approval of City. Such approval shall not be unreasonably withheld.
- C. Cleanup. DECC shall provide for inspection and cleanup of fireworks debris at first light on the morning following the display.
- D. Rain Date. Should inclement weather prevent the firing of the fireworks display on July 4, DECC shall use July 5 as the rain date for the fireworks display unless both Parties mutually agree to a different date.
- E. Permits. DECC shall, at its sole cost and expense, procure all licenses and permits necessary for carrying out the provisions of this Agreement.
- F. Compliance with Laws. DECC shall comply with all applicable laws, rules, and regulations in the provision of services under this Agreement.

III. PAYMENT TERMS.

- A. Compensation. For satisfactory performance of DECC's duties required under this Agreement, City shall pay to DECC an amount not to exceed that allocated by the City Council from the tourism tax fund for a fireworks display for the year in which the display occurs ("Fee"). The Fee shall be payable from Fund 258-030-5310 (Tourism Taxes, Finance, Contract Services). Annually upon City's receipt of invoice from DECC, the Fee shall be due and payable net thirty (30) days. For 2026, the Fee shall not exceed \$100,000 as allocated by the City Council.
- B. Allocation Adjustment. It is understood and agreed that the City is only able to allocate funds for a fireworks display to the extent that sufficient tax revenue is available in the tourism tax fund and is duly appropriated by the City Council. City will review the tax revenues collected from time to time throughout the year. In the event City determines that the tourism tax revenues collected by City during any year of the Term will fall short of the allocation amount, City reserves the right to adjust any allocation for a fireworks display. City will notify DECC in writing of such adjustment.
- C. Non-Appropriation. If the City Council does not allocate, appropriate, or otherwise provide funding for a fireworks display in a given year during the Term,

DECC shall be released from its duties under this Agreement for that year, and City shall have no obligation to pay DECC from City revenues. Additionally, City may terminate this Agreement immediately without penalty.

- IV. INDEMNIFICATION. To the fullest extent permitted by law, DECC agrees that it shall defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all costs or expenses, claims or liabilities, including but not limited to reasonable attorney's fees and expenses, whether asserted by DECC or any third party. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of DECC, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by DECC, its employees, agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten (10) days' written notice from the City of Duluth, the DECC shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. DECC shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the intentional, willful, or wanton acts or omissions of the City. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by DECC. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

DECC understands that this provision may affect its rights and may shift liability and specifically agrees to the same.

V. INSURANCE.

- A. DECC shall comply with the following insurance obligations and shall provide the minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota and comply:
- i. Workers' compensation insurance in accordance with the laws of the State of Minnesota;
 - ii. Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and

411 West First Street
Duluth, MN 55802

With copy to: City of Duluth
Property and Facilities Management
1532 West Michigan Street
Duluth, MN 55806

To DECC: Attn: Dan Hartman
350 Harbor Drive
Duluth, MN 55802

VII. GENERAL TERMS AND CONDITIONS.

- A. Immunity. Nothing in this Agreement will be construed as a waiver by the City of any immunity, defenses, or other limitations on liability to which the City is entitled by law, including, but not limited to, the liability limits under Minnesota Statutes Chapter 466.
- B. Assignment. DECC shall not assign or transfer any of its rights or interests under this Agreement in any way whatsoever.
- C. No Relationship. This Agreement is not intended nor should it be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures, or associates between the parties hereto or as constituting DECC as the employee of the City for any purpose or in any manner.
- D. Choice of Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be those courts located in St. Louis County.
- E. Entire Agreement. This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. DECC, by the signature below of its authorized representative, hereby acknowledges that DECC has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

- F. Execution and Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- G. Amendment. The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written instrument signed by the Parties.
- H. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- I. Attorney Fees. In the event a lawsuit of any kind is instituted on behalf of the City to collect any payment due under this Agreement or to obtain performance of any kind under this Agreement, DECC agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.
- J. Force Majeure. Neither party shall be responsible for any failure to comply with the terms of this Agreement where such failure is due to force majeure, which shall include, without limitation, fires, floods, explosions, strikes, labor disputes, labor shortages, picketing, lockouts, transportation embargoes, curtailment of transportation, strikes or labor disputes affecting supplies, acts of God, acts of nature, civil riot or insurrection, acts of any government or agency thereof, and judicial action. Specifically excluded from this definition are government and judicial actions which could have been avoided by compliance with publicly available laws, rules, and regulations of which either party had knowledge or should have reasonably had knowledge.
- K. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- L. Waiver. The failure of the City to enforce any provisions of this Agreement shall not constitute a waiver by the City of that or any other provision.
- M. Civil Rights Covenant of DECC. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to work to be done pursuant to this Agreement. This Agreement shall

be conducted in compliance with the Minnesota Humana Rights Act, Minnesota Statutes Chapter 363A.

- N. Access to Records. The City and its duly authorized representative shall have access to the books, documents, papers, and records of the DECC that are related to this Agreement.
- O. Data Practices. All data collected, created, received, maintained, or disseminated for any purpose by the parties because of this Agreement is governed by the Minnesota Data Practices Act.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized.

CITY OF DULUTH

DECC

By: _____
Mayor

By: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney